

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

**THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR**

MONDAY, THE 10TH DECEMBER 2007 / 19TH AGRAHAYANA 1929

MFA.No. 101 of 2005()

OA.52/2000 of RAILWAY CLAIMS TRIBUNAL, ERNAKULAM

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APPELLANT: APPLICANT:-

**LILJO JOSE, S/O. JOSE,
MUNDAKKAL HOUSE, PAYYAVOOR P.O., MUTHARIKKULAM,
SREEKANDAPURAM (VIA), KANNUR DISTRICT.**

BY ADV. SRI.P.NARAYANAN

RESPONDENT: RESPONDENT:

**UNION OF INDIA,
REPRESENTED BY GENERAL MANAGER,
SOUTHERN RAILWAY, CHENNAI.**

BY ADV. SMT.M.R.SREELETHA, SC, RAILWAYS

**THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 10/12/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

**K.S. Radhakrishnan &
T.R. Ramachandran Nair, JJ.**

M.F.A.NO.101 OF 2005

Dated this the 10th day of December, 2007

JUDGMENT

Radhakrishnan, J.

Claimant is the appellant. The claim petition was preferred under Section 16 of the Railway Claims Tribunal Act, 1987 claiming a total compensation of Rs.5,75,000/-, for the injury sustained by the claimant while he was travelling in train No.6349, Parasuram Express, from Kannur to Mangalore on 9.7.1999. When the train reached Neeleswar, he went to the toilet and while coming back from the toilet and going near the wash basin the train suddenly jerked and he fell off from the train and sustained serious injuries. His left leg was amputated and sustained crush injury on the right thigh, grievous injury on the right knee, punctured wound over right leg, fracture of right major bone-femur, tibia, etc. He was taken to the Government Hospital, Kanhangad. Since the injuries were serious, he was taken to the City Hospital Research and Diagnostic Centre, Mangalore. He narrated the entire incident when he was examined as P.W.1. Exts.P1 to P5 documents were produced by the claimant. Ext.P1 is the journey ticket, Ext.P2 is the wound certificate, Ext.P3 is the disability certificate and

Exts.P4 and P5 are bills. No witness was examined on the side of the respondents. No document was produced. In the objection filed by the Railways, it is stated that the claimant might have fallen from the train while getting down from the moving train and the Railways cannot be held as liable for the rash and negligent act of the claimant. It is also stated that the claimant had exaggerated the nature of injury and claimed exorbitant amount as compensation. It is further stated that the injury sustained by the claimant comes under the Railway Accidents and Untoward Incidents (Compensation) Amendment Rules, 1989 and the Railways is not liable to pay compensation for pain and suffering, etc.

2. The Claims Tribunal rejected the application holding that the applicant had not proved the incident. It is also stated that no case was registered in the nearby police station nor any report has been submitted by the Station Master to the nearest police station. The claimant had not examined his friends Mr. Reji and Mr. Linto who were travelling with him in the train. Further, it is also noticed that no railway accident as defined under Section 123(a) of the Railways Act, 1989 has happened. The Claims Tribunal also took the view that whether a person sustains injuries in a train accident or untoward incident, it is the burden of the injured to prove the same. Since the claimant had not proved the incident, the Railway

Administration cannot be held liable.

3. The fact that the appellant was a passenger in train No.6349 Parasuram Express, on 9.7.1999 is not disputed. He was travelling from Kannur to Mangalore. Neeleswar was not the place of his destination. Therefore, there was no reason for the claimant to get down from the train at Neeleswar. He had stated that he was coming from the toilet to wash basin and due to the sudden jerking of the train, he fell down and thereby caused serious injuries. The injured was aged 19 years. He was travelling with his friends Mr. Reji and Mr. Linto. Since the accident was very serious, he was taken to the nearby Government Hospital and later to the City Hospital Research and Diagnostic Centre, Mangalore. The wound certificate has been produced as Ext.P2, which would show that he was admitted in that hospital on 10.7.1999. Ext.P2 also refers to the railway accident on 9.7.1999 at Neeleswar. We have perused the oral evidence of P.W.1. The case put up by the claimant has not been effectively contested. No question was asked to P.W.1 whether the injury was sustained due to the railway accident and whether he was negligent. On facts, we are convinced that the claimant had established that the accident had occurred on 9.7.1999, due to the sudden jerk of the train.

4. Section 124-A of the Railways Act deals with compensation on

account of untoward incident. Untoward incident has been defined in Section 123(c) of the Act. Section 123(c)(2) takes in the accidental falling of any passenger from a train carrying passengers. Section 124-A says that “no compensation shall be payable under this section by the railway administration if the passenger dies or suffers injury due to suicide or attempted suicide by him; self-inflicted injury; his own criminal act; any act committed by him in a state of intoxication or insanity; any natural cause or disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident.” It is clear from the definition as well as Section 124-A that even if the passenger is negligent, he is entitled to compensation.

5. In our view, the claimant has established that he had suffered injuries in a train accident on 9.7.1999. The Railway Accidents and Untoward (Incidents)(Compensation) Rules 1990 refers to schedule of injuries. Clause 20 deals with amputation below knee with stump exceeding 3 1/2” but not exceeding 5”. For the injury which resulted in amputation below knee exceeding 3 1/2” but not exceeding 5”, compensation to be paid is Rs.2 lakhs. Going by the schedule of injuries, we are of the view that the claimant is entitled to a compensation of Rs.2 lakhs with interest at the rate of 6% per annum from the date of application

till payment.

The appeal is allowed and the award of the Railway Claims Tribunal is set aside. The amount, as directed above, will be paid within two months from the date of receipt of a copy of this judgment.

(K.S. Radhakrishnan, Judge.)

(T.R. Ramachandran Nair, Judge.)

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